

**S.B. CIVIL WRIT PETITION NO.7925/2007
(Sang Singh Vs. State of Rajasthan & ors.)**

Date of Order :: 6th December 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.P.R.Singh for the petitioner.

Heard learned counsel for the petitioner and perused the material placed on record.

By way of an appeal (No. 1429/2007) before the Rajasthan Civil Services Appellate Tribunal, Jaipur the petitioner, asserting himself to be working on the post of Farash with the respondent department, sought to question the order dated 31.07.2007 whereby he was transferred from Circuit House, Jaisalmer to Circuit House, Mount Abu. The appeal came to be rejected by the Tribunal on 09.08.2007.

Challenging the orders aforesaid, the petitioner preferred a writ petition before this Court, being S.B. Civil Writ Petition No.5909/2007. Though the petitioner stated the grounds of challenge in the said writ petition, inter alia, that he was low paid employee and was transferred 550 kms. away only on the basis of a complaint made by the Manager, Circuit House, Jaisalmer and such an order of transfer was not proper; and that he was transferred vice a person who was a Chowkidar whereas the petitioner was a Farash and the two posts being distinct, he could not have been transferred vice a

Chowkidar however, while arguing, learned counsel for the petitioner in all fairness limited his submission only to the extent that the Tribunal was in error in not considering the fact that the petitioner did make a representation stating his personal difficulties and the said representation was not considered by the authorities.

This Court noticed that the Tribunal had rejected the appeal with the observations that the petitioner was transferred only for administrative reasons and has failed to show if the transfer was suffering from any mala fide or violation of any statutory requirement; and further with the observations that for any grievance against the transfer order, the petitioner ought to have made a proper representation to the authorities concerned. This Court also noticed the personal difficulties pointed out on behalf of the petitioner, the fact of his having made a representation and having stated so in his memo of appeal before the Tribunal, and further the fact that he had not been relieved from Circuit House, Jaisalmer. In the circumstances of the case, this Court passed the following order on 03.10.2007 while partly allowing the writ petition filed by the petitioner:-

The petitioner, asserting himself to be working on the post of Farash in the respondent department, sought to question his order of transfer dated 31.07.2007 from Circuit House, Jaisalmer to Circuit House, Mount Abu by way of an appeal (No.1429/2007) before the Rajasthan Civil Services Appellate Tribunal, Jaipur that has been

rejected by the impugned order dated 09.08.2007. Hence, this writ petition.

The petitioner questioned the order of his transfer on the grounds , inter alia, that he was a low paid employee and was transferred 550 kms. away only on the basis of a complaint made by the Manager, Circuit House, Jaisalmer and the transfer order was not proper; that he was transferred vice respondent No.4 Poonam Singh who was a Chowkidar whereas the petitioner was a Farash and the two posts being distinct, he could not have been transferred vice the said respondent. From the memo of appeal filed before the Tribunal, it appears that the petitioner also submitted that he made a representation against his transfer (Annex. P/4 with the memo of appeal) stating his personal difficulties but the representation had not been considered by the department.

The Tribunal has proceeded to reject the appeal with the observations that by the order dated 14.09.2005 it appeared that the petitioner was working as Farash-cum-Chowkidar and has nevertheless been posted as Chowkidar; that the petitioner has failed to show if the transfer was suffering from any mala fide; and that the transfer order was made only for the administrative reasons. The Tribunal has further observed that if he had any grievance against the transfer order, the petitioner ought to have made a proper representation with the authorities concerned and else he was working on a transferable post and it was not shown if the transfer order was suffering from violation of any statutory requirement.

While arguing this writ petition, learned counsel for the petitioner, in all fairness, has limited his submissions only to the extent that the Tribunal has been in error in not considering the fact that the petitioner did make a representation stating his personal difficulties and the said representation was not considered; and the Tribunal has erred in observing as if no any representation was made. Learned Deputy Government Advocate has attempted to support the order impugned but could not dispute the position obtainable on record that the petitioner did make a representation on 01.08.2007 and took the averment in that regard in his appeal but the Tribunal has not addressed itself to the said fact available on record.

It has been pointed out that the petitioner has yet not been relieved from Circuit House, Jaisalmer.

Having regard to the facts and circumstances of the case where the petitioner has pointed out that he is low paid employee and has in his family five children, ailing mother in 70 years of age and old and infirm father in 83 years of age, and the petitioner had already made representation to the authorities concerned and has yet not been relieved, it appears appropriate that the authorities should take objective decision on the representation made by the petitioner and if necessary, the petitioner may make representation afresh within a week from today. Till the authorities take final decision on the representation of the petitioner, status quo as was obtainable on the date of filing of this writ petition in relation to the posting of the petitioner may be maintained.

Accordingly, this writ petition is partly allowed to the extent indicated above; the impugned order passed by the Tribunal on 09.08.2007 is modified in the manner that the concerned authorities shall take decision on the representation already made by the petitioner, or if made afresh within a week from today, objectively and at the earliest. Until taking of such decision by the authorities concerned, status quo as was obtainable in relation to the posting of the petitioner on 11.09.2007, the date of filing of this writ petition, shall be maintained. No costs

The petitioner has now filed this writ petition with the submissions that after passing of the order aforesaid, he made yet another representation with copy of the order passed by this Court to the authorities concerned (Annex.7). Though the said document does not bear any date, learned counsel informs on instructions that the authorities concerned received the said representation on 15.10.2007. Be that as it may, the

petitioner submits that the said representation has purportedly been rejected under the communication dated 17.11.2007 (Annex.8), and he has been relieved on 22.11.2007 (Annex.9).

It has been contended that the transfer order has been issued in order to accommodate the respondent No.4, and else there was no justification in transferring the petitioner to a far-off place; that transfer of the petitioner has been made against the post of Chowkidar though he is working on the post of Farash and he cannot be posted against the post of Chowkidar; that the petitioner has been informed that his transfer has been ordered on the basis of a complaint made by the respondent No.5 though the matter has neither been investigated on the said complaint nor the petitioner has been heard in that regard nor even a preliminary enquiry has been conducted. It has also been urged that the petitioner is a low paid employee who has been transferred to a place about 500 kms. away from the present place of posting, that his children, younger in age, are studying at Jaisalmer, his old mother in 70 years of age is seriously ill, and his father in 83 years of age is also in old and infirm condition; that the authorities have not properly considered the representation made by the petitioner and the same has been rejected in a wholly cryptic manner without having regard even to the observations made by this Court in the earlier order dated 03.10.2007 and such rejection

of his representation does not meet with the requirements of law.

It may be pointed out that in this writ petition, the petitioner had also averred that in the meantime (i.e., after passing of the order by this Court and decision on the representation) he was appointed as President of District Branch of Rajasthan Sahayak Karamchari Sangh, Jaisalmer; and it was suggested that as per the circulars, an incumbent holding the post of union should not be transferred to any other place. The petitioner stated the following as a ground in paragraph 17(f) of the writ petition:-

"(f) That the petitioner most respectfully submits that in the mean time the Rajasthan Sahayak Karamchari Sangh has appointed the petitioner as a President of District Branch Jaisalmer and as per the various circulars an incumbent holding the post of union should not be transferred to any other place. Therefore also this writ petition deserves to be allowed."

A copy of the so-called appointment order dated 14.11.2007 issued by the District Branch of Rajasthan Sahayak Karamchari Sangh, Jaisalmer placed on record by the petitioner as Annexure-10 in support of the ground aforesaid reads as under:-

“आज दिनांक 14 नवम्बर 2007 को राजस्थान सहायक कर्मचारी संघ, जिला शाखा जैसलमेर के कार्यकर्ताओं/पदाधिकारियों की एक बैठक डाक बंगलो में आहूत की गई, जिसमें संगठनात्मक स्थिति पर विचार करते हुए श्री सांगसिंह भाटी, सर्किट हाउस, जैसलमेर को

आगामी निर्वाचन तक राजस्थान सहायक कर्मचारी संघ, जिला शाखा जैसलमेर का जिलाध्यक्ष नियुक्त करने का फैसला किया गया ।

अतः मैं एतद्द्वारा मदनसिंह प्रदेश अध्यक्ष, राजस्थान सहायक कर्मचारी संघ संविधान प्रदत्त अधिकारों का प्रयोग करते हुए आज की बैठक में लिए गये निर्णय का अनुमोदन करते हुए श्री सांगसिंह भाटी को अपनी कार्यसमिति गठन करने का अधिकार देता हूँ । यह आदेश तत्काल प्रभावी माने जावेंगे ।"

Upon this Court expressing reservations on the proposition aforesaid, of the petitioner claiming a right to remain posted at Jaisalmer on the basis of his alleged nomination as President of the Employees' Union made at the point of time when his transfer order was very much in existence and was only in abeyance under the orders of this Court until disposal of the representation, learned counsel for the petitioner frankly submitted that he would not press upon the said ground that the petitioner has any right to remain posted at Jaisalmer for being an office bearer of the Union.

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner, this Court is clearly of opinion that this writ petition remains bereft of substance and the petitioner is not entitled to any relief in the extra-ordinary writ jurisdiction of this Court.

Though learned counsel appearing for the petitioner, in all fairness, has not pressed the aforesaid ground whereby the petitioner claimed a right to remain posted at Jaisalmer for having been nominated as President of the Employees' Union on 14.11.2007, the very fact that such a ground was suggested by the petitioner in the writ petition for consideration leads to a very strong inference against the intentions of the petitioner. On 14.11.2007 the petitioner was very much aware of the fact that he had been transferred to Mount Abu and that his challenge to such transfer order had already failed before the Tribunal and further that this Court granted indulgence only to the extent that his representation would be decided objectively by the authorities particularly for the reason that such representation was not taken into consideration by the Tribunal. The petitioner was aware of the position that until the authorities would take final decision on his representation, status quo as was available on the date of filing of the said writ petition in relation to his posting was to be maintained in view of the order passed by this Court. The conduct of the petitioner after passing of the said order by this Court, of accepting nomination as office bearer, President, of the Employees' Union at Jaisalmer gives rise to more questions rather than supplying him with any legal rights; and on such assertion the petitioner could least be acceded a right to remain posted at

Jaisalmer. In the totality of the facts and circumstances, it appears that such a proposition has been adopted by the petitioner only to somehow prevent himself being transferred from Jaisalmer and to cling on the said place of posting.

Be that as it may, even while leaving such shortcomings in the conduct of the petitioner aside and even after examining the matter on merits, this Court is unable to find any reason to consider any interference now in this matter. The petitioner made the representation (Annex.7) pursuant to the order passed by this Court and it is not the case that the said representation has not been considered by the department. The communication dated 17.11.2007 (Annex.8) clearly states that representation has been examined and the authorities are of opinion that transfer of the petitioner made to Circuit House, Mount Abu for administrative reason is not to be cancelled. Though the said communication is not that of a reasoned order and states that the petitioner had been relieved but relieving order seems to have been made on 22.11.2007, however, such shortcomings in the communication dated 17.11.2007 are hardly of any material bearing on the case of the petitioner.

The substance of the matter remains that the petitioner made a representation that was considered by the authorities; and the authorities yet formed the opinion that the petitioner

was required to join at the transferred place. No exception can be taken if the concerned authorities, even after considering the representation have decided not to withdraw or alter the transfer order made in relation to the petitioner.

It is true that a speaking order dealing with the submissions made in the representation point-by-point has not been passed; but, having regard to the nature of the administrative action i.e., transfer of an employee from one place to another, for consideration of the representation of the employee, it cannot be laid down as a rule of universal application that the authorities would be required to pass speaking order in every case. Further, in such an administrative matter, this Court is clearly of opinion that the authorities concerned deserve not to be directed to take a particular decision in a particular manner; and the merits of the representation are required to be left for consideration of the authorities concerned. Though it would have been discreet on the part of the authorities if they would have made a brief speaking order on the representation but merely for the authorities having not done so, the present one does not appear to be a case fit enough to take any other view and to consider any further interference in this matter. The transfer order was made in relation to the petitioner as back as on 31.07.2007 and the petitioner obviously holds a transferable

post. There appears no such principle that personal inconvenience of the petitioner, if at all, could override the administrative exigencies.

Learned counsel for the petitioner has referred to a decision of this Court in the case of Dr.Mukesh Kumar Vashistha Vs. State of Rajasthan & others: 2001 WLC (Raj.) (UC) 375 and has relied on the observations made by this Court in paragraph-12 of the said decision. The said decision, instead of supporting the case of the petitioner rather goes against him. This Court in the case of Dr.Mukesh Kumar Vashistha (supra) has clearly pointed out,-

"7. Transfer is an incident of service and transfer order should never be passed on the ground of duration at a particular place for the simple reason that it is the employer who has to decide as when and on what place the services of an employee are required in administrative exigency. The Tribunal or the Court should not interfere with the transfer order unless the transfer order is shown either passed in flagrant violation of the statutory Rules or had been passed on malafide grounds. The issue of malafides may be considered by the Court or the Tribunal only in case the person against whom malafides are alleged has been impleaded by name as a party and he has been given the opportunity to rebut the allegations of mala fides. (vide State of Bihar v. P.P.Sharma 1992 Supp. (1) SCC 222; All India State Bank Officers Federation and Ors. v. Union of India and Ors. 1996 (8) JT 550; Dr.J.N. Banabalikar v. Municipal Corporation of Delhi & Anr. AIR 1996 SC 326).

8. The transfer policy framed by the State Government does not have any statutory character and the terms and conditions incorporated in the transfer policy are not enforceable in Court of law as held by the Hon'ble Supreme Court in Bank of India Vs. Jagit Singh Mehta AIR 1992 SC 519; Union of India v. S.L.Abbas

AIR 1993 SC 2444; Shilpi Bose v. State of Bihar AIR 1991 SC 532; and State of Punjab v. Jogendar Singh AIR 1993 SC 2486).

9. The personal inconveniences caused to any employee by transfer order can be considered only by the employer and not by the Court or the Tribunal."

The other observations made by the court are obviously related to the fact situation of the said case and in the overall circumstances, this Court considered it proper to request the authorities to re-consider the case and to pass an appropriate order examining the requirement of administrative exigency, within a period of four weeks from the date of filing of copy of the said order. On principles, it remains trite in law, and reiterated in Dr. Mukesh Kumar's case (*supra*), that the order of transfer could be subjected to judicial review only if the same is shown vitiated by mala fide or for violation of any statutory requirement. No such case is made out in the present writ petition so as to consider interference in extraordinary writ jurisdiction.

So far other aspects of the matter are concerned, it does not appear from the transfer order that the same has been made on some complaint. It has been the petitioner's case that some complaint was made, but no particulars in that regard are available. Irrespective of such complaint, it was always open for the authorities concerned to pass an order of transfer

of the petitioner. Further, even if it be assumed for the sake of arguments that there was available any such complaint and the authorities did consider the same too, the order of transfer cannot be held vitiated on that count alone. In any event, the authorities have not put any stigma while making such transfer order; and reference to any such so-called complaint appears to be wholly misplaced.

Further submissions regarding the post and regarding accommodation of the respondent No.4 are neither of any substance nor of avail; and noticeable it is that in the earlier writ petition such grounds were not pressed into service as such. This Court of course directed consideration of representation of the petitioner and the impugned order has been issued by the authorities concerned after considering the representation of the petitioner. The order so made now remains unexceptionable and this Court is unable to find any reason to interfere at the instance of the petitioner in this case.

Even otherwise, the petitioner already stands relieved and there does not appear any reason or cause to consider interference in extra-ordinary writ jurisdiction of this Court.

The petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

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